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DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 90

[OVW Docket No. 111]

RIN 1105-AB43

Grants to Encourage Arrest Policies and Enforcement of Protection Orders

AGENCY: Office on Violence Against Women, Justice.

ACTION: Proposed Rule.

SUMMARY: This rule proposes to amend the regulations for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) to incorporate statutory changes, make minor technical corrections, and streamline existing regulations to reduce repetition of statutory language. This rule would also amend the regulations to clarify that existing regulations on grant-related procedures continue to apply to grants made by the Office on Violence Against Women.

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. OVW 111 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through <http://www.regulations.gov> using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at the <http://www.regulations.gov> website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express

mail, they should be sent to Marnie Shiels, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE, Suite 10W.121, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women, 145 N Street, NE, Suite 10W.121, Washington, DC 20530, by telephone (202) 307-6026 or by email at marnie.shiels@usdoj.gov.

SUPPLEMENTARY INFORMATION:

Background

The Violence Against Women Act and Subsequent Legislation

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. VAWA recognized the need for specialized responses to violence against women given the unique barriers that impede victims from accessing assistance from the justice system. To help communities develop these specialized responses, VAWA authorized several grant programs, including the Grants to Encourage Arrest Policies Program (Arrest Program). The Arrest Program is codified at 42 U.S.C. 3796hh through 3796hh-4. The final rule for the Arrest Program, found at 28 CFR part 90, subpart D, was promulgated on August 6, 1996.

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464. On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Pub. L. No.

109-162, 119 Stat. 2960. On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4, 127 Stat. 54. These reauthorizations all enhanced the Arrest Program in different ways.

Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program

The Arrest Program is designed to encourage State, local, and tribal governments and State, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law. The Arrest Program recognizes that sexual assault, domestic violence, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial scrutiny and management of offender behavior. The Arrest Program challenges the community to listen, communicate, identify problems, and share ideas that will result in new responses to ensure victim safety and offender accountability.

VAWA 2000 made several changes to the Arrest Program including prioritizing enforcement of protection orders, recognizing the roles of courts, probation, and parole, and addressing the specific needs of older victims and victims with disabilities. VAWA 2005 made additional changes including expanding the program to address sexual assault, adding new purpose areas, and adding new certification requirements relating to HIV testing of sex offenders and prohibiting polygraphing of sexual assault victims. VAWA 2013 added several sexual assault- specific purpose areas, a set aside of funds of 25% for projects that address sexual assault, and improved the certification and eligibility requirements.

Description of Proposed Changes

This rule proposes to amend the regulations for the Arrest Program to comply with statutory changes and reduce repetition of statutory language.

In addition, the Violence Against Women Office Act, title IV of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, codified at 42 U.S.C. 3796gg-0 et seq., authorized the Office on Violence Against Women as a “separate and distinct office within the Department of Justice.” To avoid any possible confusion, this rule would clarify that the existing grant-making provisions of 28 CFR Part 18, which set forth hearing and appeal procedures available for applicants and for recipients of certain Department of Justice grant funding, apply to grants administered by the Office on Violence Against Women.

Executive Orders 12866 and 13563 - Regulatory Review

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation, and in accordance with Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule relates to matters of agency practice and procedure and amends the applicable regulations to conform to statutory changes.

Executive Order 13132

This proposed regulation draft will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with

Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office on Violence Against Women, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: the economic impact is limited to the Office on Violence Against Women's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Parts 0 and 90

Grant programs; Judicial administration.

For the reason set forth in the preamble, the Office on Violence Against Women proposes to amend 28 CFR parts 0 and 90 as follows:

PART 0 ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. In § 0.122, add a new paragraph (c) to read as follows:

§ 0.122 Office on Violence Against Women

(c) Departmental regulations set forth in part 18 of this title, shall apply with equal force and effect to grant programs administered by the Office on Violence Against Women, with references to the Office of Justice Programs and its components in such regulations deemed to refer to the Office on Violence Against Women, as appropriate.

PART 90 VIOLENCE AGAINST WOMEN

3. Subpart D is revised to read as follows:

Subpart D—Arrest Policies in Domestic Violence Cases

Secs.

90.60 Scope

90.61 Definitions and Grant Conditions

90.62 Purposes

90.63 Eligibility

90.63a Speedy Notice to Victims

90.64 Application Content

90.65 Evaluation

90.66 Review of Applications

§90.60 Scope The eligibility criteria, purpose areas, application requirements, and statutory priorities for this program are established by 42 U.S.C. 3796hh *et seq.*

§90.61 Definitions and Grant Conditions

(a) In General. For purposes of this subpart, the definitions and grant conditions in 42 U.S.C. 13925 apply.

(b) Unit of Local Government. For the purpose of this subpart, a unit of local government is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

The following are not considered units of local government for purposes of this subpart:

- Police departments;
- Pre-trial service agencies;
- District or city attorneys' offices;
- Sheriffs' departments;
- Probation and parole departments;
- Shelters;
- Nonprofit, nongovernmental victim service providers; and
- Universities.

§90.62 Purposes

(a) Purpose areas for the program are provided by 42 U.S.C. 3796hh(b).

(b) Grants awarded for these purposes must demonstrate meaningful attention to victim safety and offender accountability.

§90.63 Eligibility

(a) Eligible entities are described in 42 U.S.C. 3796hh(c).

(b) Certifications.

(1) State, local, and tribal governments. State, local, and tribal government applicants must certify that they meet the requirements of 42 U.S.C. 3796hh(c)(A) through-(E) or that they will meet the requirements by the statutory deadline.

(2) Courts. Court applicants must certify that they meet the requirements of 42 U.S.C. 3796hh(c)(C) through-(E) or that they will meet the requirements by the statutory deadline.

(3) State, tribal, or territorial domestic violence or sexual assault coalitions or victim service providers. Applicants that are domestic violence or sexual assault coalitions or other victim service providers must partner with a State, local, or tribal government. The partner government must certify that it meets the requirements of 42 U.S.C. 3796hh(c)(A) through(E) or that it will meet the requirements by the statutory deadline.

(4) Letters. Eligible applicants or partners must submit a letter with proper certifications signed by the chief executive officer of the State, local government, or tribal government participating in the project, in order to satisfy these statutory requirements. OVW will not accept submission of statutes, laws or policies in lieu of such a letter.

(c) Partnerships.

(1) Governments and courts. All State, local, and tribal government and court applicants are required to enter into a formal collaboration with victim service providers and, as appropriate, population specific organizations. Sexual assault, domestic violence, dating violence, or stalking victim service providers must be involved in the development and implementation of the project. In addition to the requirements of 42 U.S.C. 13925, victim service providers should meet the following criteria:

(A) Address a demonstrated need in their communities by providing services that promote the dignity and self-sufficiency of victims, improve their access to resources, and create options for victims seeking safety from perpetrator violence; and

(B) Do not engage in or promote activities that compromise victim safety.

(2) Coalitions and victim service providers. All State, tribal, or territorial domestic violence or sexual assault coalition and other victim service provider applicants are required to enter into a formal collaboration with a State, Indian tribal government or unit of local government, and, as appropriate, population specific organizations.

§90.63a Speedy Notice to Victims

(a) In General. A State or unit of local government shall not be entitled to 5 percent of the funds allocated under this subpart, unless the State or unit of local government certifies that it meets the requirements regarding speedy notice to victims provided in 42 USC 3796hh(d).

(b) Units of local governments.

(1) Units of local government grantees may certify based on State law, policy, or regulation or based on local law, policy, or regulation.

(2) In the event that a unit of local government does not have authority to prosecute “crime[s] in which by force or threat of force the perpetrator compels the victim to engage in sexual activity[,],” the unit of local government may submit a letter from an appropriate legal authority in the jurisdiction certifying that the jurisdiction does not have the authority to prosecute “crime[s] in which by force or threat of force the perpetrator compels the victim to engage in sexual activity” and that therefore the certification is not relevant to the unit of local government in question.

§90.64 Application Content

(a) Format. Applications from eligible entities must be submitted as described in the relevant program solicitation developed by the Office on Violence Against Women and must include all the information required by 42 USC 3796hh-1(a).

(b) Each eligible applicant must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance

will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§90.65 Evaluation

(a) Recipients of Arrest Program funds must agree to cooperate with federally-sponsored research and evaluation studies of their projects at the direction of the Office on Violence Against Women.

(b) Grant funds may not be used for purposes of conducting research or evaluations. Recipients of Arrest Program funds are, however, strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of their projects. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice or other research funding sources for this purpose.

§90.66 Review of Applications

The provisions of 42 U.S.C. 3796 et seq. and of the regulations in this subpart provide the basis for review and approval or disapproval of applications and amendments in whole or in part.

Dated: July 24, 2014.

Bea Hanson,
Principal Deputy Director.